

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION SIX**

EASLEY & RIVERS, INC.<sup>1</sup>

Employer

and

Case 6-RC-11955

OPERATIVE PLASTERERS' & CEMENT  
MASONS' INTERNATIONAL ASSOCIATION OF  
THE UNITED STATES AND CANADA, LOCAL  
NO. 31, AFL-CIO, CLC

Petitioner

LASO CONTRACTORS, INC.

Employer

and

Case 6-RC-11956

OPERATIVE PLASTERERS' & CEMENT  
MASONS' INTERNATIONAL ASSOCIATION OF  
THE UNITED STATES AND CANADA, LOCAL  
NO. 31, AFL-CIO, CLC

Petitioner

WYATT, INCORPORATED

Employer

and

Case 6-RC-11958

OPERATIVE PLASTERERS' & CEMENT  
MASONS' INTERNATIONAL ASSOCIATION OF  
THE UNITED STATES AND CANADA, LOCAL  
NO. 31, AFL-CIO, CLC

Petitioner

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<sup>1</sup> The names of the Employers in Cases 6-RC-11955 and 6-RC-11956 appear as amended at the hearing.

## **DECISION AND DIRECTION OF ELECTIONS AND ORDER SEVERING CASES**

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Suzanne C. Bennett, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.<sup>2</sup>

Upon the entire record in this case,<sup>3</sup> the Regional Director finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. Each of the Employers is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in each of the matters herein.

3. The labor organization involved claims to represent certain employees of each of the Employers.

4. Questions affecting commerce exist concerning the representation of certain employees of each of the Employers within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

On March 21, 2001, the Petitioner filed the above-captioned petitions pursuant to Section 9(c) of the Act seeking elections for certain employees of each Employer. On March 29, 2001, these petitions were consolidated pursuant to Section 102.72 of the National Labor Relations Board Rules and Regulations,<sup>4</sup> and the Motion of Master Interior Contractors Association (MICA) to intervene in these cases was granted.

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<sup>2</sup> Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by April 26, 2001.

<sup>3</sup> Each party at the hearing waived its right to file a brief in this matter.

<sup>4</sup> At the hearing, the Petitioner requested to withdraw a fourth petition it had filed, in Case 6-RC-11957, involving Vinfred Interior Systems Company, Incorporated, which was then consolidated with the above-captioned petitions. On April 9, 2001, the Acting Regional Director issued an Order Severing Case 6-RC-11957 from this proceeding and Approving Withdrawal of the Petition in Case 6-RC-11957.

In the instant proceeding the parties stipulated that the Petitioner is the representative, pursuant to Section 8(f) of the Act, of certain employees of each of the Employers and that, by the petitions herein, the Petitioner is seeking to become the Section 9(a) representative of the petitioned-for employees.

The parties stipulated that each employer is a specialty contractor in the construction industry, performing commercial construction; that they are each members of the Intervenor, MICA, which is a multi-employer bargaining group, in existence since the early 1970's; that MICA is signatory to a collective-bargaining agreement with the Petitioner for the period June 1, 1998, through May 31, 2005; and that each of the Employers herein is bound to that agreement as a member of MICA, and through having separately "signed off on" the agreement with the Petitioner.

The current collective-bargaining agreement between the parties specifically lists the following counties as included within the Petitioner's geographic jurisdiction: Allegheny, Armstrong, Beaver, Butler, Clearfield, Fayette, Greene, Jefferson, Lawrence, Mercer (western half), Washington and Westmoreland. Article III, Geographic Jurisdiction, further provides that the Petitioner's geographic jurisdiction "shall be applicable to any additional territory that may be granted" to the Petitioner by the International Union. The Petitioner contends that this language, in conjunction with the International Union's expansion of the Petitioner's territorial jurisdiction to include the counties of Crawford, Mercer, Venango, Warren, Forest, Clarion, McKean, Elk, Cameron and Potter in the State of Pennsylvania, results in the Section 8 (f) agreement having been extended to all of the counties in the petitioned-for unit. The Employer disputes the Petitioner's contention in this regard.

Notwithstanding their contrary positions described above, the parties stipulated at the hearing that there are no eligibility issues and that the following petitioned-for unit is an appropriate unit for each of the Employers:<sup>5</sup>

All full-time and regular part-time journeymen and apprentice plasterers employed by the employer in Allegheny, Armstrong, Fayette, Forest, Greene, Jefferson, Lawrence, Mercer, McKean, Potter, Beaver, Butler, Cameron, Clarion, Clearfield, Crawford, Elk, Washington, Westmoreland, Warren and Venango counties; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act, and all other employees.

Accordingly, based on the above and the record as a whole, I find that the following employees of the respective Employers constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

In Case 6-RC-11955: All full-time and regular part-time journeymen and apprentice plasterers employed by Easley & Rivers, Inc. in Allegheny, Armstrong, Beaver, Butler, Cameron, Clarion, Clearfield, Crawford, Elk, Fayette, Forest, Greene, Jefferson, Lawrence, Mercer, McKean, Potter, Venango, Warren, Washington and Westmoreland counties in Pennsylvania; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act, and all other employees.

In Case 6-RC-11956: All full-time and regular part-time journeymen and apprentice plasterers employed by Laso Contractors, Inc. in Allegheny, Armstrong, Beaver, Butler, Cameron, Clarion, Clearfield, Crawford, Elk, Fayette, Forest, Greene, Jefferson, Lawrence, Mercer, McKean, Potter, Venango, Warren, Washington and Westmoreland counties in Pennsylvania; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act, and all other employees.

In Case 6-RC-11958: All full-time and regular part-time journeymen and apprentice plasterers employed by Wyatt, Incorporated in Allegheny, Armstrong, Beaver, Butler, Cameron, Clarion, Clearfield, Crawford, Elk, Fayette, Forest, Greene, Jefferson, Lawrence, Mercer, McKean, Potter, Venango, Warren, Washington and Westmoreland counties in Pennsylvania; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act, and all other employees.

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<sup>5</sup> The parties further stipulated that, if the Petitioner is certified as the Section 9(a) representative of the bargaining units involved in the elections that will be conducted by the Board, the terms of the current Section 8(f) agreement will remain in effect for each of the Employer's bargaining units for the duration of the current agreement, and will be extended to those counties identified above which are not currently listed in the Section 8(f) agreement. The parties further stipulated that, if the agreement is so extended, then either party will have a right to request discussion or negotiation of the terms of the agreement, but that neither party will be obligated to change the terms of the current agreement until its reopening in 2005.

## **DIRECTION OF ELECTIONS**

Elections by secret ballot will be conducted by the undersigned Regional Director among the employees in the units set forth above at the time and place set forth in the Notices of Election to be issued subsequently,<sup>6</sup> subject to the Board's Rules and Regulations.<sup>7</sup> Eligible to vote are those employees in the respective units who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. In accordance with the Board's holdings in Daniel Construction Company, Inc., 133 NLRB 264 (1961), as modified 167 NLRB 1078, 1081 (1967), and Steiny and Company, Inc., 308 NLRB 1323, 1326 (1992),<sup>8</sup> I find the following individuals are also eligible to vote in the elections: those individuals who were employed in the respective units for either (1) a total of 30 working days or more within the 12 months immediately preceding the eligibility date for the elections or (2) a total of 45 working days or more within the 24 months immediately preceding the eligibility date for the elections, with some employment in the immediately preceding 12-month period, and who have not been terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed by the respective Employers. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services

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<sup>6</sup> At the hearing, each of the parties requested and agreed that the elections herein would be conducted by means of a mail ballot.

<sup>7</sup> Pursuant to Section 103.20 of the Board's Rules and Regulations, official Notices of Election shall be posted by the respective Employers in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. As soon as the election arrangements are finalized, the Employers will be informed when the Notices must be posted in order to comply with the posting requirement. Failure to post the Election Notices as required shall be grounds for setting aside the election whenever proper and timely objections are filed. The Board has interpreted Section 103.20(c) as requiring an employer to notify the Regional Office at least five (5) full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.

<sup>8</sup> At the hearing, the parties stipulated to the application of this eligibility formula.

of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.<sup>9</sup> Those eligible shall vote whether or not they desire to be represented for collective bargaining by Operative Plasterers' & Cement Masons' International Association of the United States and Canada, Local No. 31, AFL-CIO, CLC.

The undersigned having duly considered the matter and deeming it no longer necessary that these cases be consolidated in order to effectuate the purposes of the Act,

**IT IS HEREBY ORDERED**, that these cases be, and they hereby are, severed.

Dated at Pittsburgh, Pennsylvania, this 12th day of April 2001.

/s/Gerald Kobell

Gerald Kobell  
Regional Director, Region Six

NATIONAL LABOR RELATIONS BOARD  
Room 1501, 1000 Liberty Avenue  
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355-1100  
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<sup>9</sup> In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc. 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that the election eligibility list, containing the full names and addresses of all eligible voters, must be filed by each of the respective Employers with the Regional Director within seven (7) days of the date of this Decision and Direction of Elections. The Regional Director shall make the appropriate list available to all parties to the respective elections. In order to be timely filed, such list must be received in the Regional Office, Room 1501, 1000 Liberty Avenue, Pittsburgh, PA 15222, on or before April, 19, 2001. No extension of time to file the respective lists may be granted, except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.